

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) H0003921 (002.0121)
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/627,492	Filed 2003-07-25
	First Named Inventor Gregg E. Skow	
	Art Unit 2167	Examiner Lovel, K. M.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record. 45,264
Registration number _____.
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____.

/PAUL D. AMROZOWICZ/

Signature

Paul D. Amrozowicz

Typed or printed name

(480) 385-5060

Telephone number

February 15, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

<input checked="" type="checkbox"/>	*Total of <u>1</u> forms are submitted.
-------------------------------------	---

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gregg E. SKOW

Group Art Unit: 2167

Serial No.: 10/627,492

Examiner: K. M. Lovel

Filed: July 25, 2003

Confirmation No.: 4206

For: MULTIPLE SYSTEM COMPATIBLE DATABASE SYSTEM AND METHOD

Docket No.: H0003921 (002.0121)

Customer No.: 89955

ARGUMENTS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

I. Status of the Claims

Claims 1, 6, 7, 11, 15, 20, 21, 25, 37, 42, 43, and 47 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent Nos. 6,804,664 (Hartman et al.) and 5,710,915 (McElhiney), Claims 8-10, 12-14, 22-24, 26-28, and 44-48 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Hartman et al., McElhiney, and U.S. Patent No. 5,201,046 (Goldberg et al.); and Claim 49 was rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Hartman et al., McElhiney, and U.S. Patent Nos. 6,134,500 (Tang et al.).

II. Arguments

Hartman et al. relates to a database that is structured to enable faster, more efficient queries. To do so, the data to be stored in the database is characterized as a number of questions, and each record in the database comprises bit map groups that correspond to the answers to the questions. The answers may be binary attributes, range attributes, and string attributes, depending on the question type. With this type of structure, database queries are obtained by simple bit-wise Boolean operations of the records in the database, beginning first with binary attribute matching, then range attribute matching, and finally string attribute

matching. With each attribute matching operation, records in the database are eliminated from the query, thus making the query more efficient (col. 8, l. 9 through col. 12, l. 11).

McElhiney relates to a system and method to easily store and manipulate data in a relational database system, preferably by implementing what is referred to as “transitive closures” (col. 3, l. 63 through col. 4, l. 42). McElhiney discloses, in the Abstract, a database management system (DBMS) that stores, retrieves, and manipulates directed graph data structures in a relational database. Data are stored in a database in the form of two dimensional tables, which are referred to as flat files. The DBMS defines a schema for each table in the database. The schema defines the name and data type of each column in a database table. Tables that are used to store directed graph data structures include at least one column defined as having a reference data type. Non-empty entries in that column are pointers to rows in a specified table. Directed graph data structures are stored in specified tables by storing each record of the directed graph in a distinct row of one of the specified tables, with references corresponding to interconnections between records being stored in reference data type columns. Portions of a directed graph are retrieved from the specified table, in accordance with a single specified query and then the query is automatically expanded by also retrieving additional portions of the tables which are referenced by the previously retrieved portions, thereby performing a transitive closure. The retrieved data is stored in a buffer as a list of rows, and then communicated to an application process. An interface program converts the list of rows stored in the buffer into a directed graph data structure.

The Office action alleges that Hartman et al. discloses a database that is compatible with multiple end-user systems. The Office action further alleges that the content database of Hartman et al. corresponds, at least generally, to the data section of independent Claims 1, 15, 37, and 49 of the instant application, and cites col. 4, ll. 35-46, col. 6, ll. 19-24, and col. 7, ll. 39-48 to support this allegation. The Office action also alleges that Hartman et al. discloses, at least generally, the structure section of independent Claims 1, 15, 37, and 49 of the instant application, and cites col. 6, ll. 25-38, col. 7, ll. 16-26, and col. 8, ll. 9-18 and 54-64 to support this allegation. The Office action then goes on to opine that the only deficiency of Hartman et al. is that it does not disclose that the data section and the structure section each comprise a plurality of tables.

To make up for the lacunae of Hartman et al., the Office action cites McElhiney.

Specifically, the Office action cites col. 7, ll. 49-58 of McElhiney as disclosing “the partitioning of a data table into a plurality of tables.” The Office action then goes on to conclude that it would have been obvious “to partition the data section and the structure sections of Hartman into a plurality of tables . . . to provide parallel access to the tables which accelerates access.” Office action at 4-5. As will now be explained, the analysis proffered in the Office action is inaccurate, in that Hartman et al. does not disclose all that is alleged in the Office action. Furthermore, the combination of Hartman et al. and McElhiney does not establish a *prima facie* case of obviousness.

Hartman et al. Does Not Disclose the Claimed Data Section

As was noted above, the Office action alleges that that the content databases (150, 151, 152) of Hartman et al. correspond to the claimed data section. The Office action references col. 4, ll. 35-46, col. 6, ll. 19-24, and col. 7, ll. 39-48 to support this allegation.

Interestingly, if one reviews the above-noted portions of Hartman et al. it is readily apparent that these portions do not even remotely address the content databases (150, 151, 152). More significantly, however, according to the independent claims of the instant application: (1) each data table that comprises the data section includes a plurality of *data records that each have one or more features that affect its compatibility with one or more of the end-user systems*, and (2) *each data record includes a feature field that contains one or more feature bits representative of each of its features*. Although Hartman et al. discloses looking up fields in the correlation table and retrieving bitmasks for the attributes corresponding to the fields, nowhere does Hartman et al. disclose, in those portions referenced in the Office action or any other portion, data records having one or more features that affect **compatibility with one or more of end-user systems or data records that include a feature field that contains one or more feature bits representative of each of its features**.

In the Response to Arguments section of the final Office action, the Examiner attempts to rebut the above argument by alleging that col. 6, ll. 25-39 of Hartman et al. discloses that the user profile database stores information regarding users and about client devices, and that col. 5, ll. 3-14 and 25-33 disclose that a binary attribute is compared to the profile. Based on this, the Examiner makes the conclusory statement that “the records can be filtered based on compatibility.”

Although Hartman et al. discloses storing user profile data and client profile data, and that user profiles may refer to client profiles, and vice-versa, the reason is because multiple users may use a particular client, and a particular user may use multiple clients. This has nothing whatsoever to do with data records having features that affect the data record's compatibility with an end-user system. Rather, this deals with whether a user, via a specific client, may access certain data. As has been stated repeatedly during the prosecution of this application, accessibility to data by a device or system, and compatibility of data with a device or system, are completely different issues. It is the former at which, at best, Hartman et al. even hints.

Applicants submit that the Examiner is conflating, within the paradigm of the claimed technology, the plain and ordinary meanings of "compatibility" and "accessibility." Specifically, the plain and ordinary definition for compatibility, in the context of the claimed invention, is: (of software) capable of being run on another computer without change.¹ According to the same source,² accessibility has the following common meanings: (1) easy to approach, reach, enter, speak with, or use; (2) that can be used, entered, reached, etc.; (3) obtainable; attainable; and (4) open to the influence of (usually fol. by *to*). In the context of Hartman et al. either the second (that can be used, entered, reached, etc.) or third definitions (obtainable; attainable) fit, as it refers to the ability to use, reach, or obtain data.

Hartman et al. Does Not Disclose the Claimed Structure Section

The Office action also alleges that Hartman et al. discloses a structure section. The Office action references col. 6, ll. 25-38, col. 7, ll. 16-26, and col. 8, ll. 9-18 and 54-64 to support this allegation.

According to the independent claims: (1) each feature mask table that comprises the structure section includes a feature mask record for each of the multiple end-user systems that use one or more of the data tables that include the data records having one or more features, and (2) *each feature mask record includes one or more feature mask values that indicate whether the one or more features of a data record are compatible with one or more of the end-*

¹ Institute of Electrical and Electronics Engineers (IEEE): Dictionary.com, "compatibility," in *Dictionary.com Unabridged*. Source location: Random House, Inc. Available: <http://dictionary.reference.com>. Accessed: February 12, 2010.

user systems, and thereby indicate whether the data record is compatible with one or more of the end-user systems.

Applicants wish to note that the Examiner does not even bother to address the above argument in the final Office action. It is submitted that this is because the argument cannot be rebutted. Moreover, the panel reviewing this paper should accept this lack of rebuttal as a stipulation to the Examiner's error.

McElhiney

As regards McElhiney, it was cited for allegedly "partitioning of a data table into a plurality of tables." Office action at 4. However, all that this reference discloses is storing data in a database in the form of two dimensional tables, and not partitioning a data table into many data tables. Nonetheless, even if one were to concede that McElhiney discloses what the Office action alleges, it does not make up for the rather glaring deficiencies of Hartman et al. with respect to the independent claims. Therefore, the combination of Hartman et al. and McElhiney does not, indeed cannot, establish a *prima facie* case of obviousness.

Goldberg et al. & Tang et al.

Applicants do not concede that these references disclose what is alleged, but submit that neither, either alone or in combination, make up for the deficiencies of Hartman et al. and/or McElhiney.

Respectfully submitted,

INGRASSIA FISHER & LORENZ

Dated: February 15, 2010

By: /PAUL D. AMROZOWICZ/
Paul D. Amrozowicz
Reg. No. 45,264
(480) 385-5060

² Dictionary.com, "accessibility," in *Dictionary.com Unabridged*. Source location: Random House, Inc. Available: <http://dictionary.reference.com>. Accessed: February 12, 2010.